

HOUSE BILL No. 1518

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Telecommunications regulatory reform. Specifies that a person or an entity that transmits communications over the Internet is not a public utility subject to the regulation of the utility regulatory commission (IURC). Prohibits the IURC from exercising jurisdiction over: (1) advanced and broadband services; and (2) information services. After June 30, 2007, prohibits the IURC from exercising jurisdiction over: (1) any nonbasic telecommunications service; and (2) pricing, terms, and conditions for basic telecommunications service. Requires the IURC to biennially identify and eliminate telecommunications regulations no longer necessary due to advances in technology and competition. Provides that a provider's rates for intrastate switched and special access service are just and reasonable if they mirror the provider's interstate rates. Specifies that duties to provide dual party relay services for the hearing and speech impaired apply to providers of advanced, broadband, and other Internet services. Specifies the rights and obligations of providers of last resort, exiting providers, and successor providers. Repeals existing alternative regulatory procedures.

Effective: July 1, 2005.

Murphy, Lutz J, Mahern, Kuzman

January 18, 2005, read first time and referred to Committee on Technology, Research and Development.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1518

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) **Except as provided in**
3 **section 1.1 of this chapter**, "public utility", as used in this chapter,
4 means every corporation, company, partnership, limited liability
5 company, individual, association of individuals, their lessees, trustees,
6 or receivers appointed by a court, that may own, operate, manage, or
7 control any plant or equipment within the state for the:

8 (1) conveyance of telegraph or telephone messages;

9 (2) production, transmission, delivery, or furnishing of heat, light,
10 water, or power; or

11 (3) collection, treatment, purification, and disposal in a sanitary
12 manner of liquid and solid waste, sewage, night soil, and
13 industrial waste.

14 The term does not include a municipality that may acquire, own, or
15 operate any of the foregoing facilities.

16 (b) "Municipal council", as used in this chapter, means the
17 legislative body of any town or city in Indiana wherein the property of



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the public utility or any part thereof is located.

(c) "Municipality", as used in this chapter, means any city or town of Indiana.

(d) "Rate", as used in this chapter, means every individual or joint rate, fare, toll, charge, rental, or other compensation of any utility or any two (2) or more such individual or joint rates, fares, tolls, charges, rentals, or other compensation of any utility or any schedule or tariff thereof, but nothing in this subsection shall give the commission any control, jurisdiction, or authority over the rate charged by a municipally owned utility except as in this chapter expressly provided.

(e) "Service" is used in this chapter in its broadest and most inclusive sense and includes not only the use or accommodation afforded consumers or patrons but also any product or commodity furnished by any public or other utility and the plant, equipment, apparatus, appliances, property, and facility employed by any public or other utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public or other utility is engaged and to the use and accommodation of the public.

(f) "Commission", as used in this chapter, means the commission created by IC 8-1-1-2.

(g) "Utility", as used in this chapter, means every plant or equipment within the state used for:

- (1) the conveyance of telegraph and telephone messages;
- (2) the production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to the public; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate facilities for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. A warehouse owned or operated by any person, firm, limited liability company, or corporation engaged in the business of operating a warehouse business for the storage of used household goods is not a public utility within the meaning of this chapter.

(h) "Municipally owned utility", as used in this chapter, includes every utility owned or operated by a municipality.

(i) "Indeterminate permit", as used in this chapter, means every grant, directly or indirectly from the state, to any corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, of

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power, right, or privilege to own, operate, manage, or control any plant or equipment, or any part of a plant or equipment, within this state, for the:

- (1) production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to or for the public;
- (2) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste; or
- (3) furnishing of facilities for the transmission of intelligence by electricity between points within this state;

which shall continue in force until such time as the municipality shall exercise its right to purchase, condemn, or otherwise acquire the property of such public utility, as provided in this chapter, or until it shall be otherwise terminated according to law.

SECTION 2. IC 8-1-2-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.1. A person or an entity that:**

- (1) transmits communications over the Internet, including:**
 - (A) voice communications;**
 - (B) data;**
 - (C) video streams; or**
 - (D) any combination of voice, data, and video communications; or**
- (2) provides the necessary software, hardware, transmission service, or transmission path for communications described in subdivision (1);**

is not a public utility (as defined in section 1 of this chapter) solely by reason of engaging in any activity described in subdivisions (1) through (2).

SECTION 3. IC 8-1-2.6-0.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.1. (a) As used in this chapter, "basic telecommunications service" means stand alone local exchange service that:**

- (1) is provided to a residential customer through the customer's primary line; and**
- (2) is:**
 - (A) the sole service purchased by the customer;**
 - (B) not part of a package of services, a promotion, or a contract; or**
 - (C) not otherwise offered at a discounted price.**
- (b) "Basic telecommunications service" includes, at a minimum,**

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the following:

- (1) Voice grade access to the public switched telephone network with minimum bandwidth of 300 to 3,000 Hertz.
- (2) Dual tone multifrequency signaling and single party service.
- (3) Access to:
 - (A) emergency services, including access to 911 and enhanced 911 if provided by the local government having jurisdiction in the service area;
 - (B) operator services;
 - (C) local directory assistance;
 - (D) telephone relay services; and
 - (E) interexchange service.
- (4) Toll limitation services for qualifying low income customers.

SECTION 4. IC 8-1-2.6-0.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 0.2. As used in this chapter, "basic telecommunications rates and charges" means the monthly recurring rate for basic telecommunications service, including:

- (1) flat rate and message rate service; and
- (2) any nonrecurring charge for installation or a line or service connection.

SECTION 5. IC 8-1-2.6-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 0.3. (a) As used in this chapter, "nonbasic telecommunications service" means retail telecommunications service other than:

- (1) basic telecommunications service, except when the service is purchased by the customer:
 - (A) in conjunction with another service;
 - (B) as part of a package of services, a promotion, or a contract; or
 - (C) at an otherwise discounted price;
 - (2) commercial mobile radio service (as defined in 47 CFR 51.5); and
 - (3) services outside the jurisdiction of the commission under section 1.1 of this chapter.
- (b) The term includes services included in:
- (1) customer specific contracts;
 - (2) volume, term, and discount pricing options; and
 - (3) packages, bundles, and promotions, including offers

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designed to win new customers, retain existing customers, or win back former customers.

SECTION 6. IC 8-1-2.6-0.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.4. As used in this chapter, "provider" means a person or entity that offers basic or nonbasic telecommunications service.**

SECTION 7. IC 8-1-2.6-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.5. As used in this chapter, "telecommunications" has the meaning set forth in 47 U.S.C. 153(43).**

SECTION 8. IC 8-1-2.6-0.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.6. As used in this chapter, "telecommunications service" has the meaning set forth in 47 U.S.C. 153(46).**

SECTION 9. IC 8-1-2.6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The Indiana general assembly hereby declares that:

(1) the maintenance of universal telephone service is a continuing goal of the commission in the exercise of its jurisdiction;

(2) competition has become commonplace in the provision of ~~certain telephone~~ **telecommunications** services in Indiana and the United States;

(3) **advancements in and the convergence of technologies that provide voice, video, and data transmission, including:**

(A) **landline, wireless, cable, satellite, and Internet transmissions; and**

(B) **transmissions involving voice over Internet Protocol (VoIP), Internet Protocol enabled services, and voice over power lines;**

are substantially increasing consumer choice, reinventing the marketplace with unprecedented speed, and making available highly competitive products and services and new methods of delivering local exchange service.

~~(3)~~ (4) **traditional commission regulatory policies, and practices, and existing statutes are not designed to deal with a competitive environment and technological advancements;**

~~(4)~~ (5) **an environment in which Indiana consumers will have available the widest array of state-of-the-art telephone telecommunications services at the most economic and reasonable cost possible will necessitate full and fair facilities based competition in the delivery of certain telephone**

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telecommunications services throughout the state, ~~Indiana~~; and
 (5) ~~(6)~~ streamlining of, and flexibility in, the regulation of
 providers of ~~telephone~~ telecommunications services, ~~regardless~~
 of the technology used, is essential to the well-being of the state,
 Indiana, its economy, and its citizens and that the public interest
 requires that the commission be authorized to formulate and adopt
 rules and policies as will permit the commission, in the exercise
 of its expertise, to regulate and control the provision of ~~telephone~~
 telecommunications services to the public in an increasingly
 competitive and technologically changing environment, giving
 due regard to the interests of consumers and the public, the
 ability of market forces to encourage innovation and
 investment, and to the continued universal availability of
 universal ~~telephone~~ basic telecommunications service.

SECTION 10. IC 8-1-2.6-1.1 IS ADDED TO THE INDIANA
 CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2005]: Sec. 1.1. (a) The commission shall not
 exercise jurisdiction over:

- (1) advanced services (as defined in 47 CFR 51.5);
- (2) broadband service, as defined by the Federal
 Communications Commission; or
- (3) any service not commercially available on February 8,
 1996.

(b) The commission shall not exercise jurisdiction over
 information services (as defined in 47 U.S.C. 153(20)) or Internet
 Protocol enabled services, as defined by the Federal
 Communications Commission, except:

- (1) as expressly permitted under IC 8-1-2.8;
- (2) as may be reasonably necessary to provide for access to
 emergency services, including access to 911 and enhanced
 911; and
- (3) for purposes of determining the rights and obligations of
 any provider concerning the payment of switched network
 access rates or other compensation for use of another
 provider's facilities or services.

The commission shall not impose requirements under this
 subsection that exceed those imposed by, or that are otherwise
 inconsistent with, federal law, including federal regulations.

SECTION 11. IC 8-1-2.6-1.2 IS ADDED TO THE INDIANA
 CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2005]: Sec. 1.2. (a) The commission shall not,
 by entering an order, adopting a rule, or taking any other action,

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do any of the following:

(1) Impose a regulation concerning any nonbasic telecommunications service unless the regulation is imposed equally and uniformly on all providers.

(2) Impose a service quality regulation or performance standard concerning any nonbasic telecommunications service.

(3) Exercise jurisdiction over:

(A) any nonbasic telecommunications service; or

(B) the provider of any nonbasic telecommunications service;

if the commission has declined to exercise jurisdiction over the service or provider before July 1, 2005.

(b) Subject to section 12 of this chapter, after June 30, 2007, the commission shall not exercise jurisdiction over any nonbasic telecommunications service except as follows:

(1) A provider may elect to file and maintain with the commission tariffs for nonbasic telecommunications services offered by the provider in Indiana. The commission shall permit a provider to implement a tariff, or a modification to a tariff, on the first day immediately following the date of filing with the commission.

(2) The commission may investigate, on a formal or informal basis, a complaint concerning a provider's compliance with a tariff filed with the commission under subdivision (1). The commission's investigation shall be limited to the sole issue of the provider's compliance with the filed tariff. The commission shall conduct a formal investigation only upon the request of any class satisfying the standing requirements of IC 8-1-2-54.

SECTION 12. IC 8-1-2.6-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.3. (a) The commission shall not, by entering an order, adopting a rule, or taking any other action, do any of the following with respect to basic telecommunications services and providers of basic telecommunications services:**

(1) Impose a regulation concerning any basic telecommunications service unless the regulation is imposed equally and uniformly on all providers.

(2) Impose a service quality regulation unless the regulation is imposed equally and uniformly on all providers.

(3) Impose a regulation or performance standard concerning

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service quality that:

(A) is more stringent than any service quality regulation or performance standard in effect on July 1, 2005; or

(B) measures performance more often than quarterly.

(4) Impose a reporting requirement concerning service quality that requires reporting to the commission more frequently than quarterly.

(5) Impose a regulation concerning universal availability of basic telecommunications service unless the regulation is imposed on a nondiscriminatory and competitively and technologically neutral basis.

(6) Exercise jurisdiction over:

(A) any basic telecommunications service; or

(B) the provider of any basic telecommunications service; if the commission has declined to exercise jurisdiction over the service or provider before July 1, 2005.

(7) Impose a regulation on, or exercise jurisdiction over:

(A) any basic telecommunications service; or

(B) the provider of any basic telecommunications service; if the service or provider is exempt from commission jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5, except as allowed under IC 8-1-2-88.5 or IC 8-1-17-22.5.

(b) Subject to subsection (c) and section 12 of this chapter, after June 30, 2007, a provider with more than one (1) rate class for basic telecommunications service may, without the prior approval of the commission, begin to transfer one (1) or more of the provider's monthly recurring rates for basic telecommunications service to a rate not exceeding the provider's highest monthly recurring rate for basic telecommunications services, as in effect on July 1, 2007. A provider may adjust one (1) or more of the provider's monthly recurring rates under this subsection not more than once in any twelve (12) month period and by an amount not to exceed one dollar (\$1). A provider shall provide the commission and all affected customers thirty (30) days advance notice of each rate adjustment under this subsection.

(c) Through the period ending July 1, 2010, a provider that increases one (1) or more recurring rates under subsection (b) shall continue to make available a flat monthly rate for basic telecommunications services in the local calling areas in which the provider offers basic telecommunications services on July 1, 2005.

(d) Subject to section 12 of this chapter, after June 30, 2007, the commission shall not exercise jurisdiction over the pricing, terms,

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and conditions for basic telecommunications service, except as follows:

(1) A provider may elect to file and maintain with the commission tariffs for basic telecommunications services offered by the provider in Indiana. The commission shall permit a provider to implement a tariff or a modification to a tariff on the first day immediately following the date of filing with the commission. A provider may withdraw without the approval of the commission any tariff filed under this subdivision.

(2) The commission may investigate, on a formal or informal basis, a complaint concerning a provider's compliance with a tariff filed with the commission under subdivision (1). The commission's investigation shall be limited to the sole issue of the provider's compliance with the filed tariff. The commission shall conduct a formal investigation only upon the request of any class satisfying the standing requirements of IC 8-1-2-54.

SECTION 13. IC 8-1-2.6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. ~~(a) Notwithstanding any other statute, the commission may:~~

~~(1) on its own motion;~~

~~(2) at the request of the utility consumer counselor;~~

~~(3) at the request of one (1) or more telephone companies; or~~

~~(4) at the request of any class satisfying the standing requirements of IC 8-1-2-54;~~

~~enter an order, after notice and hearing, that the public interest requires the commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over telephone companies or certain telephone services. (a) This section applies to commission rules and orders concerning telecommunications service or providers of telecommunications service.~~

(b) Rules and orders described in this section:

(1) may be adopted or issued only after notice and hearing; and

(2) must be:

(A) consistent with this chapter; and

(B) in the public interest, as determined by the commission under subsection (d).

(c) Rules and orders described in this section must promote one (1) or more of the following:

(1) Cost minimization for providers to the extent that a

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provider's quality of service and facilities are not diminished.

(2) A more accurate evaluation by the commission of a provider's physical or financial conditions or needs as well as a less costly regulatory procedure for either the provider, the provider's customers, or the commission.

(3) Development of depreciation guidelines and procedures that recognize technological obsolescence.

(4) Increased provider management efficiency beneficial to customers.

(5) Regulation consistent with a competitive environment.

(b) (d) In determining whether the public interest will be served, as required under subsection (b), the commission shall consider:

(1) whether technological change, competitive forces, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the commission unnecessary or wasteful;

(2) whether the exercise of commission jurisdiction produces tangible benefits to telephone company the customers of providers; and

(3) whether the exercise of commission jurisdiction inhibits a regulated entity from competing with unregulated providers of functionally similar telephone telecommunications services or equipment.

(c) The commission may:

(1) on its own motion;

(2) at the request of the utility consumer counselor;

(3) at the request of one (1) or more telephone companies; or

(4) at the request of any class satisfying the standing requirements of IC 8-1-2-54;

enter an order notifying any telephone company or class of telephone companies jurisdiction over which was either limited or not exercised according to this section that the commission will proceed to exercise jurisdiction over the telephone company, class of telephone companies, or class of telephone services provided by telephone companies to the extent the commission considers appropriate unless one (1) or more of those telephone companies formally request a hearing within fifteen (15) days following the date of such order.

SECTION 14. IC 8-1-2.6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A regulatory flexibility committee is established to monitor competition in the telephone industry.

(b) The committee is composed of the members of a house standing

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committee selected by the speaker of the house of representatives and a senate standing committee selected by the president pro tempore of the senate. In selecting standing committees under this subsection, the speaker and president pro tempore shall determine which standing committee of the house of representatives and the senate, respectively, has subject matter jurisdiction that most closely relates to the electricity, gas, energy policy, and telecommunications jurisdiction of the regulatory flexibility committee. The chairpersons of the standing committees selected under this subsection shall cochair the regulatory flexibility committee.

(c) The commission shall, by July 1 of each year, prepare for presentation to the regulatory flexibility committee an analysis of the effects of competition **and technological change** on universal service and on pricing of all ~~telephone~~ **telecommunications** services **remaining** under the jurisdiction of the commission.

(d) In addition to reviewing the commission report prepared under subsection (c), the regulatory flexibility committee shall also issue a report and recommendations to the legislative council by November 1 of each year that is based on a review of the following issues:

(1) The effects of competition in the ~~telephone~~ **telecommunications** industry and impact of competition **and technological change** on available subsidies used to maintain universal service.

(2) The status of modernization of the public **switched** telephone network in Indiana and the incentives required to further enhance this infrastructure.

(3) The effects on economic development and educational opportunities of this modernization.

(4) The current method of regulating ~~telephone companies~~ **telecommunications providers** and the method's effectiveness.

(5) The economic and social effectiveness of current ~~telephone~~ **telecommunications** service pricing.

(6) All other telecommunications issues the committee deems appropriate.

The report and recommendations issued under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

(e) The regulatory flexibility committee shall meet on the call of the cochairpersons to study telecommunications issues described in subsection (d). The committee shall, with the approval of the commission, retain the independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid by the commission.

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SECTION 15. IC 8-1-2.6-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.1. (a) Not later than:**

(1) July 1, 2007; and

(2) July 1 of each odd-numbered year after July 1, 2007;
the commission shall, through rulemaking under IC 4-22-2 or another commission proceeding, identify and eliminate regulations and policies concerning telecommunications services and providers that are no longer necessary or appropriate as a result of technological advancement and competition in the telecommunications industry.

(b) In carrying out this section, the commission shall promote the policies and purposes set forth in this chapter. The commission's annual report to the regulatory flexibility committee under section 4 of this chapter must:

(1) identify any regulation or policy eliminated under this section; and

(2) justify any regulation or policy that is retained.

SECTION 16. IC 8-1-2.6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 8. (a)** As used in this section, "rate reduction" means a decrease in either recurring or nonrecurring rates or charges.

(b) Notwithstanding any other provision of this chapter or any other statute, a ~~telephone company provider~~ may ~~subject to the prior approval of the commission~~, participate in any rate reduction program for residential customers funded from revenues provided by any governmental entity or other revenues administered by an agency of that entity.

SECTION 17. IC 8-1-2.6-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9. (a)** Notwithstanding any other law, a provider's rates and charges for intrastate switched and special carrier access service that mirror the provider's rates and charges for interstate switched and special carrier access service:

(1) are presumed to be just and reasonable; and

(2) may be imposed by the provider without the prior approval of the commission.

(b) A provider may request commission approval of a rate or charge for intrastate switched and special carrier access service that does not mirror the provider's rates and charges for interstate switched and special carrier access service. The commission may approve the requested intrastate rates and charges if the provider

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1 demonstrates to the commission that the exception to mirroring is
2 just and reasonable.

3 (c) The commission may impose uniform procedures for the
4 filing and modification of tariffs for intrastate switched and special
5 carrier access service.

6 (d) The commission may investigate, on a formal or informal
7 basis, a provider's compliance with a tariff filed with the
8 commission under subsection (c). The commission's investigation
9 shall be limited to the sole issue of the provider's compliance with
10 the filed tariff. The commission shall conduct a formal
11 investigation only upon the request of an entity or a class satisfying
12 the standing requirements of IC 8-1-2-54.

13 SECTION 18. IC 8-1-2.6-10 IS ADDED TO THE INDIANA CODE
14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2005]: Sec. 10. The commission shall not, when acting under any
16 authority delegated to the commission by federal law, impose any
17 requirements or set any prices concerning:

- 18 (1) unbundled network elements;
- 19 (2) the resale of telecommunications services; or
- 20 (3) interconnection with the facilities and equipment of
21 providers;

22 that exceed, or are otherwise inconsistent with, federal laws and
23 regulations. In establishing pricing for unbundled network
24 elements, the resale of telecommunications services, and
25 interconnection, the commission shall comply with federal laws and
26 regulations.

27 SECTION 19. IC 8-1-2.6-11 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
29 1, 2005]: Sec. 11. (a) Notwithstanding any other law, the
30 commission shall not, by entering an order, adopting a rule, or
31 taking any other action, impose a regulation or performance
32 standard concerning the transfer of customers between providers
33 unless the regulation or performance standard is imposed equally
34 and uniformly on all providers.

35 (b) Whenever a provider obtains information that a customer
36 has changed to another provider, the initial provider may, to the
37 extent permitted by federal law, contact the customer to confirm
38 that the customer has made the decision to change to the other
39 provider.

40 (c) A provider may not refuse to transfer or facilitate the
41 transfer of a local exchange service customer of the provider to
42 another provider on the same terms and conditions that the

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1 provider receives from any other provider unless the terms and
2 conditions violate federal law.

3 SECTION 20. IC 8-1-2.6-12 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2005]: **Sec. 12. This chapter does not terminate or otherwise**
6 **change the terms and conditions of a settlement agreement**
7 **approved by the commission under this chapter before July 29,**
8 **2004.**

9 SECTION 21. IC 8-1-2.6-13 IS ADDED TO THE INDIANA CODE
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2005]: **Sec. 13. This chapter does not modify, affect, or nullify the**
12 **responsibilities lawfully delegated to the commission under:**

13 (1) 47 U.S.C. 251; and

14 (2) 47 U.S.C. 252.

15 SECTION 22. IC 8-1-2.6-14 IS ADDED TO THE INDIANA CODE
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2005]: **Sec. 14. This chapter does not affect the rights and**
18 **obligations of any person or entity concerning the payment of**
19 **switched network access rates or other carrier compensation**
20 **concerning:**

21 (1) Internet Protocol enabled service;

22 (2) advanced services (as defined in 47 CFR 51.5);

23 (3) broadband service; or

24 (4) other Internet access services.

25 SECTION 23. IC 8-1-2.6-15 IS ADDED TO THE INDIANA CODE
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
27 1, 2005]: **Sec. 15. (a) Except as provided in subsection (b), if there**
28 **is a conflict between this chapter another provision of this article,**
29 **this chapter controls.**

30 (b) **This chapter does not affect the rights of a**
31 **telecommunications provider under IC 8-1-2-88.5 or**
32 **IC 8-1-17-22.5.**

33 SECTION 24. IC 8-1-2.8-8 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 8. As used in this**
35 **chapter, "local exchange telephone company" or "LEC" means a**
36 **company authorized by the commission to provide, among other**
37 **services, local exchange access service. The term includes a provider**
38 **of Internet Protocol enabled services that is required to provide**
39 **dual party relay services to hearing impaired and speech impaired**
40 **persons under federal law.**

41 SECTION 25. IC 8-1-19.7 IS ADDED TO THE INDIANA CODE
42 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2005]:

Chapter 19.7. Telecommunications Providers of Last Resort

Sec. 1. Except as otherwise provided, the definitions in IC 8-1-2.6 apply throughout this chapter.

Sec. 2. As used in this chapter, "exiting provider" means a provider that:

- (1) holds a certificate of territorial authority issued by the commission;**
- (2) is the predominate local exchange carrier in a defined geographic area and provides telecommunications services using the provider's own facilities; and**
- (3) ceases operation in all or part of the service area covered by the certificate of territorial authority.**

Sec. 3. As used in this chapter, "local exchange carrier" has the meaning set forth in 47 U.S.C. 153(26). The term includes an incumbent local exchange carrier (as defined in 47 CFR 51.5).

Sec. 4. As used in this chapter, "provider of last resort" means a provider that:

- (1) holds a certificate of territorial authority issued by the commission; and**
- (2) is required to offer local exchange service throughout a defined geographic area.**

Sec. 5. As used in this chapter, "successor provider" means a provider that:

- (1) holds a certificate of territorial authority issued by the commission; and**
- (2) is, or is designated to become, the provider of last resort for a defined geographic area previously served by an exiting provider.**

Sec. 6. Except as provided in section 8 of this chapter, an incumbent local exchange carrier has the obligations of the provider of last resort. An incumbent local exchange carrier may meet the carrier's obligations under this section using any available technology.

Sec. 7. (a) This section applies to a provider that holds a certificate of territorial authority to provide local exchange service in Indiana. If a provider:

- (1) decides to cease serving all or part of the provider's defined service area; or**
- (2) plans to file for bankruptcy;**

the provider shall provide at least sixty (60) days advance notice to the commission and each affected customer and wholesale

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provider.

(b) A notice described in subsection (a) must:

(1) be submitted in the form and manner prescribed by the commission; and

(2) include at least one (1) toll free customer service telephone number maintained by the provider to facilitate the continuation of service and the transition of customers to other providers.

(c) At the same time a provider gives notice under subsection (a), the provider shall file with the state a bond or other security approved by the commission in an amount that:

(1) will ensure payment to affected customers and wholesale providers of the costs incurred in the transfer of customers to other providers; and

(2) is not less than one hundred dollars (\$100) for each access line served by the provider giving notice, including any access lines that will be abandoned by the provider under subsection (a)(1).

The exiting provider is liable for all charges owed to other providers and is responsible for any provider change charges. Upon receipt of a notice under subsection (a), a wholesale provider may collect a deposit or an advance payment from the exiting provider in an amount not to exceed two (2) months of service payments for the number of access lines being transferred to the wholesale provider as the result of an event described in subsection (a), based on the billing records of the exiting provider.

Sec. 8. (a) If the holder of a certificate of territorial authority to provide local exchange service installs facilities to provide telecommunications services, including local exchange service, in a defined geographic area and:

(1) the holder is not the designated provider of last resort for the area; and

(2) the designated provider of last resort for the area has not installed facilities to serve customers in the area;

the designated provider of last resort may petition the commission for an order relieving the designated provider of its obligations as the provider of last resort in the area.

(b) The commission shall relieve the petitioning provider from its obligations as the provider of last resort for the area described in subsection (a) and shall designate the holder making the installation under subsection (a) as the provider of last resort for the area if the commission determines that:

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(1) the petitioning provider does not have facilities in place to provide local exchange service to all customers in the area; and

(2) the holder making the installation under subsection (a) has installed facilities adequate to provide local exchange service throughout the area.

The commission shall make the determinations required by this subsection not later than sixty (60) days after the date the petition is filed with the commission under subsection (a).

Sec. 9. (a) If:

(1) the commission receives notice of an exiting provider's decision to cease operation in all or part of the service area covered by the provider's certificate of territorial authority; and

(2) there is not another provider that:

(A) holds a certificate of territorial authority in the area; and

(B) has facilities sufficient to provide basic telecommunications services in the area;

the commission shall conduct a formal proceeding to determine the successor provider for the area.

(b) After determining the successor provider for the affected area under subsection (a), the commission shall, if applicable, provide to the successor provider:

(1) a reasonable time, in accordance with industry practices and not subject to otherwise applicable service quality rules or standards of the commission, in which to modify, construct, or obtain facilities necessary to serve the customers of the exiting provider; and

(2) an exemption, on a transitional basis, from any obligation to:

(A) unbundle the successor provider's network elements; or

(B) provide telecommunications services for resale within the affected area;

for nine (9) months or another period the commission may authorize as reasonably necessary to allow the successor provider to modify the successor provider's facilities to meet the obligations described in this subdivision.

(c) The successor provider is entitled to obtain funding from a state universal service fund to support the provider's assumption of obligations as the provider of last resort for the area. This

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section does not prohibit a provider from voluntarily:

- (1) serving customers in the affected area; or
- (2) purchasing the facilities of the exiting provider.

(d) A customer within the defined geographic area to be served by the successor provider is considered to have applied for basic telecommunications service from the successor provider on the effective date of the commission's designation of the successor provider. Each right, privilege, and obligation applicable to customers of the successor provider applies to a customer transferred to the successor provider under this section. A customer transferred to the successor provider under this section is subject to the successor provider's terms of service as specified in an applicable tariff or contract. This section does not prohibit a customer from seeking, at any time, service from a provider other than the successor provider.

Sec. 10. (a) As used in this section, "facilities based local exchange carrier" means a local exchange carrier that provides local exchange service:

- (1) exclusively over facilities owned or leased by the carrier; or
- (2) predominantly over facilities owned or leased by the carrier, in combination with the resale of the telecommunications services of another carrier.

(b) The commission may, on its own motion or on the petition of an interested party, institute an expedited proceeding under this section if the commission determines that:

- (1) a facilities based local exchange carrier has a certificate of territorial authority to provide local exchange service in a defined geographic area;
- (2) there is not another provider that:
 - (A) holds a certificate of territorial authority in the area; and
 - (B) has facilities sufficient to provide local exchange service in the area; and
- (3) the facilities based local exchange carrier has:
 - (A) ceased providing local exchange service to the customers in the area; or
 - (B) abandoned the operation of the carrier's facilities in the area that are used to provide local exchange service.

(c) In a proceeding under this section, the commission may declare that an emergency exists and issue any order necessary to protect the health, safety, and welfare of affected customers and to

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expedite the restoration or continuation of local exchange service to the affected customers. An order issued under this subsection may:

(1) provide for the temporary operation of the facilities based local exchange carrier's facilities by any provider, including a provider that has not been issued a certificate of territorial authority by the commission;

(2) authorize one (1) or more third parties to enter the premises of any abandoned facilities; or

(3) grant temporary waivers from quality of service requirements for any provider:

(A) providing service under subdivision (1); or

(B) designated as a successor provider by the commission under subsection (d).

(d) The commission may act under section 9 of this chapter to designate a successor provider in any proceeding under this section.

Sec. 11. (a) If a provider, other than the incumbent local exchange carrier, operates under an arrangement by which the provider is the exclusive provider of basic telecommunications services in a particular geographic area, building, or group of residences and businesses, the incumbent local exchange carrier is relieved of any provider of last resort obligations that the incumbent local exchange carrier may have with respect to the particular geographic area, building, or group of residences and buildings.

(b) If:

(1) a provider with an exclusive service arrangement described in subsection (a) decides to cease operations in all or part of the particular geographic area, building, or group of residences and buildings that the provider serves under the arrangement; and

(2) the incumbent local exchange carrier has insufficient facilities to serve the affected customers of the exiting provider but purchases the facilities of the exiting provider; the incumbent local exchange carrier has eighteen (18) months to make any modifications necessary to the purchased facilities to allow the incumbent local exchange carrier to meet any applicable unbundling or interconnection requirements with respect to the purchased facilities. The incumbent local exchange carrier may apply to the commission for an extension of the period allowed under this subsection, and the commission shall grant the extension

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1 **upon good cause shown by the incumbent local exchange carrier.**
2 SECTION 26. THE FOLLOWING ARE REPEALED [EFFECTIVE
3 JULY 1, 2005]: IC 8-1-2.6-3; IC 8-1-2.6-5; IC 8-1-2.6-6; IC 8-1-2.6-7.

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